

Update: Criminal Procedure Monograph 5—Preliminary Examinations (Revised Edition)

5.5 Scope of Preliminary Examinations

A. Probable Cause Standard

Insert the following case summary on page 8 at the end of subsection A:

In *People v Perkins*, ___ Mich ___, ___ (2003), the Michigan Supreme Court reversed the Court of Appeals' ruling that reinstated the defendant's CSC-I charge. *Perkins* involved a 16-year-old girl (complainant) and a Bay County Sheriff (defendant). The complainant and the defendant had been acquainted for four years during which time a sexual relationship developed between them. The complainant often babysat the defendant's children, attended church with the defendant's family, and for a time resided with the defendant's family, and the defendant's wife coached the complainant's basketball team.

In *Perkins*, the Michigan Supreme Court emphasized the standard by which preliminary examination evidence is to be measured before satisfying the quantum necessary to bind a defendant over for trial. The Court reiterated several well-established guidelines for conducting a proper preliminary examination. The prosecutor need not establish a defendant's guilt beyond a reasonable doubt at the preliminary exam stage, but a defendant cannot be bound over if the prosecutor has failed to present evidence on each element of the charged offense. The evidence presented need not convince the presiding magistrate of the defendant's guilt; doubt is properly resolved by the trier of fact provided the prosecutor has established probable cause that the defendant committed a crime. Conviction of a CSC-I charge requires proof of force or coercion.

In contrast to the Court of Appeals, the Michigan Supreme Court found that the prosecutor did not present evidence of coercion:

“As an authority figure, defendant had engaged the complainant in continuing sexual conduct beginning when she was much younger. The prosecutor reasoned that

defendant thus established a pattern of abuse that eroded the complainant's ability to resist his sexual advances during the incident in question." ____ Mich at ____.

The Supreme Court dismissed the defendant's CSC-I charge because "the record shows that no evidence was presented at the preliminary hearing to support the prosecutor's assertion that the complainant was coerced, in any sense of that term, to fellate defendant on the occasion in question." ____ Mich at ____.